

# **Attachment A – Part 3**

<p style="text-align: right;">Page 102</p> <p>1 standing objection, which has been  2 stated to numerous questions, about the  3 relevance of this entire line of  4 questioning and also the foundation of  5 the witness as a percipient witness to  6 testify to these facts.  7 It is readily apparent that  8 the work that he did in assisting  9 counsel in developing a proposed  10 stipulation as an expert is in fact the  11 same information that he is testifying  12 to today as a percipient witness, and  13 that in developing that information as a  14 witness in an expert capacity, it is  15 impossible for him to divorce what he  16 learned and developed as an expert and  17 try to then proffer it as percipient  18 testimony here in a deposition where he  19 is supposedly testifying as a fact  20 witness.  21 I think we can eliminate the  22 mystery. And what I will do is ask my  23 colleague to mark as Exhibit No. 8 the  24 proposed stipulation which was provided</p>	<p style="text-align: right;">Page 104</p> <p>1 (Above-described document  2 marked as Burke Exhibit 8.)  3 MR. STACK: You can tell me  4 when Exhibit 8 has been marked.  5 THE COURT REPORTER: It has  6 been marked.  7 MS. AMRON: And I'm going to  8 object not only to you using this  9 document in this way, but also to the  10 relevance of this line of questioning  11 and the use of the document.  12 MR. STACK: Does the witness  13 have a copy of Exhibit No. 8?  14 THE COURT REPORTER: Yes.  15 THE WITNESS: I do.  16 BY MR. STACK:  17 Q. I would like to direct your  18 attention to the second page of the  19 document marked as Exhibit No. 8,  20 specifically paragraph 2. There is a  21 table that says "Profile of Exxon Mobil  22 Refining Capacity 1985 to 2003."  23 Did you develop that table  24 which is included in Exhibit No. 8?</p>
<p style="text-align: right;">Page 103</p> <p>1 to defendant Exxon by the City of New  2 York, setting forth in essence the same  3 information which the witness is now  4 attempting to testify as a fact witness  5 on matters of technical or specialized  6 knowledge.  7 So if we can mark that as  8 Exhibit No. 8 and then we can ask some  9 questions about it and proceed forward.  10 MS. AMRON: I object to your  11 marking it. I object to you asking  12 questions of the witness about it. It  13 was a document that was sent to you by  14 counsel in an effort to resolve a  15 dispute between the two of us and I  16 think it is inappropriate. We can  17 obviously argue it in front of the  18 Court, and I will have a standing  19 objection to it. I don't think the  20 witness has ever seen this document.  21 You know, I'm not going to object to  22 each question. I will just object now  23 for this entire line of questioning.  24 MR. STACK: Understood.</p>	<p style="text-align: right;">Page 105</p> <p>1 MS. AMRON: Object as to  2 relevance and my standing objection.  3 A. It looks like the table I  4 put together, yes.  5 Q. And with regard to that  6 table, you developed that table based on  7 your review of technical and specialized  8 information compiled concerning national  9 petroleum refining capacity in the  10 United States; am I correct?  11 MS. AMRON: I'm going to  12 object again as to relevance. Object as  13 argumentative and repeat my standing  14 objection.  15 A. Yeah. This is based on Oil  16 and Gas Journal reported capacities for  17 Exxon Mobil facilities over this time  18 period.  19 Q. And with regard to this  20 information, is this information taken  21 from the database that's maintained by  22 your company relative to ranking  23 refiners in the United States?  24 A. No.</p>

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<p style="text-align: right;">Page 106</p> <p>1 MS. AMRON: Sorry.</p> <p>2 Objection as to relevance.</p> <p>3 A. No, this came directly from</p> <p>4 the Oil and Gas Journal, reviewing</p> <p>5 annual reports.</p> <p>6 Q. And with regard to the</p> <p>7 years 1985 to 2000, in those years you</p> <p>8 added together the refining capacity of</p> <p>9 Exxon Company USA and Mobil Oil and</p> <p>10 Refining; am I correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And with regard to the</p> <p>13 information compiled for the years 1985</p> <p>14 to 2003, did you, as part of your work</p> <p>15 on this case, make an inquiry to the Oil</p> <p>16 and Gas Journal to determine how they</p> <p>17 compiled these statistics?</p> <p>18 MS. AMRON: Objection on</p> <p>19 relevance grounds and standing</p> <p>20 objection.</p> <p>21 A. No, I did not contact the</p> <p>22 Oil and Gas Journal for that.</p> <p>23 Q. Have you ever responded to</p> <p>24 any survey conducted by the Oil and Gas</p>	<p style="text-align: right;">Page 108</p> <p>1 grounds of relevance with reference to</p> <p>2 the document and I repeat my standing</p> <p>3 objection.</p> <p>4 A. I'm sorry, prior to which</p> <p>5 year?</p> <p>6 Q. Do you know, sir, if prior</p> <p>7 to 1992 Exxon blended MTBE into any of</p> <p>8 the grades of gasoline produced at its</p> <p>9 Benicia, California refinery?</p> <p>10 MS. AMRON: Same objection.</p> <p>11 A. No, I do not.</p> <p>12 Q. With regard to the Torrance</p> <p>13 refinery operated by Mobil, do you know</p> <p>14 if the Torrance refinery blended MTBE</p> <p>15 into any of the grades of gasoline it</p> <p>16 refined at that location?</p> <p>17 MS. AMRON: Objection on the</p> <p>18 grounds of vague -- well, vagueness,</p> <p>19 relevance with respect to the documents,</p> <p>20 and repeat my standing objection.</p> <p>21 A. No, I do not.</p> <p>22 Q. In the course of your work</p> <p>23 in California, in a variety of</p> <p>24 consulting assignments that you have</p>
<p style="text-align: right;">Page 107</p> <p>1 Journal relative to the refining</p> <p>2 capacity of any of your clients?</p> <p>3 MS. AMRON: Objection, the</p> <p>4 grounds of relevance and my standing</p> <p>5 objection.</p> <p>6 A. No. No, I have not.</p> <p>7 Q. Have you ever had any</p> <p>8 contact with anyone from the Oil and Gas</p> <p>9 Journal relative to the manner in which</p> <p>10 they compile the information published</p> <p>11 in their annual report concerning</p> <p>12 refining capacity in the United States?</p> <p>13 MS. AMRON: Objection on the</p> <p>14 ground of relevance and my standing</p> <p>15 objection.</p> <p>16 A. No, I have not.</p> <p>17 Q. With regard to the document</p> <p>18 marked as Exhibit No. 8, I would like to</p> <p>19 direct your attention to paragraph</p> <p>20 No. 5. Prior to 1992 do you know if the</p> <p>21 Benicia refinery operated by Exxon</p> <p>22 company ever blended MTBE into any grade</p> <p>23 of gasoline produced at that refinery?</p> <p>24 MS. AMRON: Objection on the</p>	<p style="text-align: right;">Page 109</p> <p>1 had, did you ever learn that Exxon never</p> <p>2 blended MTBE into any gasoline refined</p> <p>3 at the Torrance refinery -- pardon me,</p> <p>4 at the Benicia refinery until an</p> <p>5 oxygenate was required in 1992?</p> <p>6 A. No. I think that's what I</p> <p>7 had said earlier, that with the CEC</p> <p>8 reporting of MTBE blending by refinery,</p> <p>9 I believe that started right around '92.</p> <p>10 Q. And is it your</p> <p>11 understanding that prior to 1992 Exxon</p> <p>12 never blended MTBE into any grade of</p> <p>13 gasoline at the Benicia refinery?</p> <p>14 MS. AMRON: Objection,</p> <p>15 mischaracterizes prior testimony.</p> <p>16 A. No, that's not my</p> <p>17 understanding. I simply don't know if</p> <p>18 they did or not.</p> <p>19 Q. And likewise with regard to</p> <p>20 Mobil's refining operation in Torrance,</p> <p>21 did you ever learn in the course of your</p> <p>22 consulting assignments in California</p> <p>23 that Mobil never blended any MTBE into</p> <p>24 any grades of its gasoline prior to</p>

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<p>1 1992?</p> <p>2 A. Again, I did not know</p> <p>3 either way, so I did not learn that.</p> <p>4 Q. With regard to gasoline</p> <p>5 produced at the Torrance refinery, can</p> <p>6 you describe what the tributary area is</p> <p>7 that's serviced by Torrance?</p> <p>8 MS. AMRON: Objection,</p> <p>9 vague.</p> <p>10 A. Could you define the</p> <p>11 "tributary area"?</p> <p>12 Q. Yes, sir. Do you know what</p> <p>13 the phrase "tributary area" means in</p> <p>14 relation to refining distribution?</p> <p>15 A. No. That's a new term to</p> <p>16 me.</p> <p>17 Q. With regard to the Torrance</p> <p>18 refinery, do you know what percentage of</p> <p>19 gasoline that was refined at Torrance</p> <p>20 went into the proprietary Mobil pipeline</p> <p>21 system?</p> <p>22 A. No, I do not.</p> <p>23 Q. With regard to the Torrance</p> <p>24 refinery, do you know what percentage of</p>	<p>1 and reformulated fuels were required to</p> <p>2 be sold.</p> <p>3 A. No, I do not.</p> <p>4 Q. With regard to the other</p> <p>5 refineries you referred to, do you know --</p> <p>6 the Billings refinery in Billings,</p> <p>7 Montana, do you know if they ever used</p> <p>8 MTBE?</p> <p>9 A. No, I do not.</p> <p>10 Q. With regard to the Mobil</p> <p>11 refinery in Joliet, Illinois, do you</p> <p>12 know if they ever used MTBE?</p> <p>13 A. I don't.</p> <p>14 Q. Do you know what percentage</p> <p>15 of the gasoline refined at Paulsboro</p> <p>16 during the period 1985 to 1997 by Mobil</p> <p>17 was conventional gasoline, did not</p> <p>18 contain MTBE?</p> <p>19 A. No, I do not.</p> <p>20 Q. Do you know what grades of</p> <p>21 gasoline, if any, refined at Paulsboro</p> <p>22 may have contained MTBE as an octane</p> <p>23 enhancer?</p> <p>24 MS. AMRON: Object as beyond</p>
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<p>1 gasoline refined at Torrance went into</p> <p>2 the Southwestern Terminal?</p> <p>3 A. No. That information is</p> <p>4 proprietary. It would not be</p> <p>5 available. I do not have it.</p> <p>6 Q. Prior to testifying here</p> <p>7 today, did you review any records from</p> <p>8 the Kinder Morgan southern California</p> <p>9 pipeline system so you could tell the</p> <p>10 jury how much, if any, reformulated</p> <p>11 gasoline refined at the Mobil Torrance</p> <p>12 refinery was shipped by Kinder Morgan?</p> <p>13 MS. AMRON: Objection, asked</p> <p>14 and answered.</p> <p>15 A. I did not.</p> <p>16 Q. With regard to the Mobil</p> <p>17 Torrance refinery, do you know how it</p> <p>18 procured MTBE that may have been used to</p> <p>19 add to oxygenated or reformulated</p> <p>20 fuels?</p> <p>21 MS. AMRON: Is there a time</p> <p>22 frame?</p> <p>23 BY MR. STACK:</p> <p>24 Q. At any time when oxygenated</p>	<p>1 the scope of direct.</p> <p>2 A. I don't believe I ever saw</p> <p>3 information about that, so, no.</p> <p>4 Q. With regard to the</p> <p>5 Paulsboro refinery, do you know how much</p> <p>6 reformulated gasoline was refined at</p> <p>7 that location during the years from 1992</p> <p>8 to 1997?</p> <p>9 MS. AMRON: Object as beyond</p> <p>10 the scope of direct.</p> <p>11 A. I do not.</p> <p>12 Q. With regard to the Bayway</p> <p>13 Refinery in the year 1992-'93, do you</p> <p>14 know how much reformulated or oxygenated</p> <p>15 fuel may have been manufactured by Exxon</p> <p>16 before that refinery was sold to Tosco?</p> <p>17 MS. AMRON: Objection,</p> <p>18 beyond the scope of direct.</p> <p>19 A. No, I do not know.</p> <p>20 Q. In looking at Exhibit No.</p> <p>21 8, Exhibit No. 8 includes a paragraph</p> <p>22 No. 13. And on page 5 there is a</p> <p>23 chart. Did you prepare the chart which</p> <p>24 appears on page 5 of Exhibit No. 8</p>

29 (Pages 110 to 113)

<p style="text-align: right;">Page 114</p> <p>1 setting forth the number of branded 2 retail outlets and market share for 3 Exxon Mobil? 4 MS. AMRON: Objection to 5 relevance. My standing objection to 6 asking this witness about this document 7 or using this document at all in this 8 deposition. 9 A. Yes, I did prepare this. 10 Q. And with regard to the 11 column that says "Exxon Mobil Total 12 Number of Branded Retail Outlets," what 13 source of information did you rely on 14 for that? 15 MS. AMRON: Objection as to 16 relevance and my same standing objection 17 to use of this document. 18 A. Everything in this table 19 came from the same source. It was the 20 National Petroleum News annual reports. 21 Q. With regard to this 22 specific data point, being the number of 23 branded retail outlets, do you know how 24 the National Petroleum News gathers that</p>	<p style="text-align: right;">Page 116</p> <p>1 relevance and repeat my standing 2 objection to this line of testimony or 3 questioning. 4 A. Well, this column is 5 calculated, so it is basically taking 6 the reported total number of retail 7 outlets, which is in the National 8 Petroleum News, and then taking the 9 first column in this table, the Exxon 10 Mobil branded retail outlets, and 11 dividing the Exxon Mobil by -- taking 12 the Exxon Mobil as a percent of the 13 total. So it's a calculated column. 14 Q. And did you actually 15 conduct the calculations? 16 MS. AMRON: Objection as to 17 relevance and I will repeat my standing 18 objection to this line of questioning. 19 A. I did. 20 Q. And with respect to the 21 information that is in this table 22 setting forth the number of branded 23 outlets and market share and the table 24 that we looked at previously about Exxon</p>
<p style="text-align: right;">Page 115</p> <p>1 data? 2 MS. AMRON: Objection as to 3 relevance and my standing objection to 4 use of this document. 5 A. Well, they do a survey, but 6 the details of how they do that 7 survey -- I don't have the details. 8 Q. Do you know, Mr. Burke, in 9 conducting the survey if the National 10 Petroleum News directs the survey to 11 Exxon Mobil Corporation or to other 12 parties engaged in the petroleum 13 business? 14 MS. AMRON: Objection as to 15 relevance and repeat my standing 16 objection to this line of questioning. 17 A. I do not know. 18 Q. With regard to the next 19 column, it says "Exxon Stations as a 20 Percentage of Total in the United 21 States." Is that information that you 22 obtained from the National Petroleum 23 News? 24 MS. AMRON: Objection as to</p>	<p style="text-align: right;">Page 117</p> <p>1 Mobil refining capacity, were you asked 2 to prepare this information as part of a 3 supplemental expert report? 4 MS. AMRON: Objection as to 5 relevance and I repeat my standing 6 objection to this line of questioning. 7 A. I was. 8 MR. STACK: I'm told now 9 that we have about a minute left on the 10 tape so we will go off the record and we 11 will allow the videographer to change 12 the tape. 13 THE VIDEOGRAPHER: We're 14 going off the record. The time is 15 4:16 p.m. This is the end of tape 2 of 16 the deposition of Bruce F. Burke. 17 (Recess.) 18 THE VIDEOGRAPHER: We're 19 back on the record. The time is 20 4:24 p.m. This is the start of tape 3 21 of the deposition of Bruce F. Burke. 22 BY MR. STACK: 23 Q. Mr. Burke, during the 24 break, did you speak to counsel?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. No.</p> <p>2 Q. With regard to the</p> <p>3 testimony you have given here today, did</p> <p>4 you have any discussions with counsel</p> <p>5 before appearing to testify?</p> <p>6 MS. AMRON: It's a yes or no</p> <p>7 question.</p> <p>8 A. Yes.</p> <p>9 Q. And with regard to your</p> <p>10 appearance here today, before appearing</p> <p>11 to testify, did you meet with counsel to</p> <p>12 discuss your testimony?</p> <p>13 A. I did prior to meeting</p> <p>14 here.</p> <p>15 Q. And who did you meet with?</p> <p>16 A. With, primarily, Susan</p> <p>17 here.</p> <p>18 Q. And was Mr. Campins present</p> <p>19 at any time?</p> <p>20 A. He was.</p> <p>21 Q. And what did you discuss?</p> <p>22 MS. AMRON: I'm going to</p> <p>23 object on the ground of privilege.</p> <p>24 MR. STACK: And what</p>	<p style="text-align: right;">Page 120</p> <p>1 MS. AMRON: About very</p> <p>2 general topics. Anything more than that</p> <p>3 I'm going to object and direct the</p> <p>4 witness not to answer.</p> <p>5 THE WITNESS: Okay. So I</p> <p>6 was asked to talk about Exxon Mobil's</p> <p>7 refining capacity on a national basis;</p> <p>8 to talk about the Exxon Mobil</p> <p>9 refineries, their location around the</p> <p>10 country; to talk, to the extent I could,</p> <p>11 about operations in California of the</p> <p>12 Exxon Mobil refineries. What else? And</p> <p>13 also to talk about the Exxon Mobil</p> <p>14 retail market share. I think that's the</p> <p>15 general areas.</p> <p>16 Q. And what else were you told</p> <p>17 by counsel would be the subject of your</p> <p>18 testimony relative to the Exxon Mobil</p> <p>19 refining capacity?</p> <p>20 MS. AMRON: I'm going to</p> <p>21 object. Bill, if you want to continue</p> <p>22 to go down this line of questioning, I'm</p> <p>23 going to object and direct the witness</p> <p>24 not to answer.</p>
<p style="text-align: right;">Page 119</p> <p>1 privilege are you asserting?</p> <p>2 MS. AMRON: Attorney-client,</p> <p>3 attorney work product.</p> <p>4 MR. STACK: Okay. Are you</p> <p>5 directing the witness not to answer?</p> <p>6 MS. AMRON: Yes.</p> <p>7 BY MR. STACK:</p> <p>8 Q. With regard to giving</p> <p>9 testimony here today, did you discuss</p> <p>10 with counsel the subjects that you would</p> <p>11 testify to in your direct testimony?</p> <p>12 MS. AMRON: That's also a</p> <p>13 yes or no question.</p> <p>14 A. Yes.</p> <p>15 Q. And what subjects were</p> <p>16 identified as topics that you would be</p> <p>17 asked questions about in your direct</p> <p>18 testimony?</p> <p>19 A. The discussion or to talk</p> <p>20 about the -- I'm sorry.</p> <p>21 MS. AMRON: That's all</p> <p>22 right. You can answer this question</p> <p>23 very generally.</p> <p>24 THE WITNESS: Sure.</p>	<p style="text-align: right;">Page 121</p> <p>1 If you want to go to another</p> <p>2 line of questioning and then we can</p> <p>3 break for a second and we can -- the</p> <p>4 City people can discuss this internally,</p> <p>5 it might move more smoothly.</p> <p>6 MR. STACK: And you are</p> <p>7 objecting and directing him not to</p> <p>8 answer on what basis?</p> <p>9 MS. AMRON: Privilege.</p> <p>10 MR. STACK: Which</p> <p>11 privilege?</p> <p>12 MS. AMRON: He is here as a</p> <p>13 percipient witness. You are asking</p> <p>14 about questions, detailed questions</p> <p>15 about our conversations with him.</p> <p>16 MR. STACK: And the</p> <p>17 privilege that you are asserting is</p> <p>18 which privilege?</p> <p>19 MS. AMRON: I'm not going to</p> <p>20 have this conversation with you on the</p> <p>21 record repeatedly. Do you want --</p> <p>22 MR. STACK: I'm simply</p> <p>23 asking for you to establish the basis of</p> <p>24 your assertion of a privilege. It is</p>

<p style="text-align: right;">Page 122</p> <p>1 not a conversation. It is just state  2 the basis of the privilege and  3 specifically which privilege it is that  4 you are relying on to direct him not to  5 answer a question.  6 MS. AMRON: Work product.  7 BY MR. STACK:  8 Q. At any point in time,  9 Mr. Burke, have you ever retained Sher  10 Leff as your counsel?  11 MS. AMRON: Objection,  12 irrelevant.  13 A. As my counsel? No.  14 Q. And at any point in time  15 have you ever engaged counsel for the  16 City of New York as your counsel to  17 represent you in this matter?  18 MS. AMRON: Objection,  19 irrelevant.  20 A. No.  21 Q. With regard to the subject  22 of the distribution of petroleum product  23 in California, what else did counsel  24 talk to you about in terms of preparing</p>	<p style="text-align: right;">Page 124</p> <p>1 THE VIDEOGRAPHER: We're  2 going off the record. The time is  3 4:30 p.m.  4 (Recess.)  5 THE VIDEOGRAPHER: We're  6 back on the record. The time is  7 4:32 p.m.  8 MS. AMRON: Okay.  9 Mr. Stack, we're going to take a  10 continuing objection to this line of  11 questioning. As you know, the witness  12 is going out of town for business and  13 will not be available here, so we will  14 let him answer the questions. We will  15 not direct him not to answer the  16 questions and we will leave the issue up  17 to the judge to decide whether all of  18 the answers should be stricken and our  19 objection upheld should the issue become  20 relevant.  21 MR. STACK: Okay.  22 BY MR. STACK:  23 Q. With respect to  24 establishing the refining capacity of</p>
<p style="text-align: right;">Page 123</p> <p>1 to testify here today?  2 MS. AMRON: Objection. I'm  3 directing the witness not to answer on  4 the ground of privilege.  5 MR. STACK: That would be  6 which privilege?  7 MS. AMRON: This is all  8 going to be work product.  9 BY MR. STACK:  10 Q. With regard to the  11 testimony that you were asked to give  12 about the ranking of Exxon in terms of  13 its share of the U.S. gasoline market,  14 what other information was provided to  15 you by counsel before coming to testify  16 here today in your deposition?  17 MS. AMRON: Objection. I'm  18 directing the witness not to answer on  19 the grounds of work product.  20 I also want to go off the  21 record a second and talk to Mr. Campins  22 off the record.  23 MR. STACK: That's  24 agreeable. Go right ahead.</p>	<p style="text-align: right;">Page 125</p> <p>1 Exxon Mobil, what were you told by  2 counsel as to why you should do that?  3 MS. AMRON: I'm going to --  4 same objection, ground of privilege.  5 A. I can't say they told me  6 why to present that.  7 Q. Based on your conversations  8 with counsel, what was your  9 understanding of the purpose in  10 compiling the refining capacity of Exxon  11 Mobil and ranking it?  12 MS. AMRON: Same objection.  13 A. Well, my understanding was  14 that in general the reason for me to be  15 here today was to talk about Exxon  16 Mobil's overall sort of scale of  17 operations on a national basis from a  18 refining capacity point of view.  19 Q. And in profiling Exxon  20 Mobil's refining capacity for the years  21 1985 to 2003, were you ever asked to  22 identify what percentage of its refining  23 capacity was engaged in producing  24 gasoline blended with MTBE?</p>

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<p>1 MS. AMRON: Same -- sorry.</p> <p>2 Same objection and also object on the</p> <p>3 ground of vagueness.</p> <p>4 A. No, I was not asked to do</p> <p>5 that.</p> <p>6 Q. Do you know with regard to</p> <p>7 Exxon Mobil how the company ranked in</p> <p>8 terms of refining capacity relative to</p> <p>9 its competitors for refining product</p> <p>10 that was blended with MTBE?</p> <p>11 MS. AMRON: Objection on the</p> <p>12 ground of vagueness.</p> <p>13 A. No, I don't because I don't</p> <p>14 have similar data on the production of</p> <p>15 reformulated gasoline at the individual</p> <p>16 refining levels, so the answer is no.</p> <p>17 Q. With regard to Exxon,</p> <p>18 during the years 1985 to 2000, do you</p> <p>19 know what percentage of the gasoline</p> <p>20 consumed in California was refined by</p> <p>21 Exxon?</p> <p>22 A. Of the gasoline, no, I do</p> <p>23 not.</p> <p>24 Q. With regard to Mobil, for</p>	<p>1 and market is not entirely but largely</p> <p>2 isolated from the rest of the country.</p> <p>3 Q. And with regard to the Gulf</p> <p>4 Coast refineries that you looked at in</p> <p>5 your reports marked Exhibits 5, 6, and</p> <p>6 7, is there any gasoline refined at the</p> <p>7 Gulf Coast facilities in Baton Rouge,</p> <p>8 Beaumont, Baytown or Chalmette that are</p> <p>9 shipped to California on a pipeline?</p> <p>10 A. To my knowledge, no.</p> <p>11 Q. With regard to your</p> <p>12 experience in the industry and your</p> <p>13 knowledge in the industry, are you aware</p> <p>14 of any instances where refined gasoline</p> <p>15 product was shipped by Exxon or Mobil</p> <p>16 from its Gulf Coast facilities to ports</p> <p>17 in California?</p> <p>18 A. I don't know specifically.</p> <p>19 I wouldn't rule it out, but I don't have</p> <p>20 the -- that specific information.</p> <p>21 Q. With regard to refiners in</p> <p>22 California, what company is the largest</p> <p>23 refiner of gasoline in California?</p> <p>24 MS. AMRON: Objection, vague</p>
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<p>1 the years 1985 to 2000, do you know what</p> <p>2 percentage of the gasoline consumed in</p> <p>3 California was refined by Mobil?</p> <p>4 A. I do not.</p> <p>5 Q. With regard to Exxon Mobil,</p> <p>6 for the years 2000 to 2003, do you know</p> <p>7 what percentage of the gasoline consumed</p> <p>8 in California was refined by Exxon</p> <p>9 Mobil?</p> <p>10 A. I'm sorry. What percentage</p> <p>11 of the MTBE gasoline or total gasoline?</p> <p>12 Q. Total gasoline.</p> <p>13 A. No, I don't know that</p> <p>14 percentage.</p> <p>15 Q. With respect to the state</p> <p>16 of California, have you ever heard it</p> <p>17 referred to as being an island market</p> <p>18 for gasoline distribution?</p> <p>19 A. Yes. Yes.</p> <p>20 Q. And can you explain to the</p> <p>21 jury what it means for the state of</p> <p>22 California to be an island market?</p> <p>23 A. Well, basically it means</p> <p>24 that the California distribution system</p>	<p>1 as to time.</p> <p>2 A. Based on crude oil</p> <p>3 capacity, I would say probably currently</p> <p>4 Chevron.</p> <p>5 Q. And Chevron, Standard Oil</p> <p>6 Company California, has how many</p> <p>7 refineries in the state of California</p> <p>8 today?</p> <p>9 MS. AMRON: Objection,</p> <p>10 relevance.</p> <p>11 A. I believe they have two.</p> <p>12 Q. And historically during the</p> <p>13 period from 1985 through 2003, how many</p> <p>14 refineries did Chevron operate that</p> <p>15 refined gasoline?</p> <p>16 MS. AMRON: In California?</p> <p>17 MR. STACK: In California.</p> <p>18 A. You know, I would have to</p> <p>19 go back and check. There's been a lot</p> <p>20 of ownership changes in the refining</p> <p>21 system in California over the years. So</p> <p>22 I could not say definitively how many</p> <p>23 year by year that Chevron operated.</p> <p>24 Q. And based on your</p>



<p style="text-align: right;">Page 130</p> <p>1 experience in the industry, after  2 Chevron, what company was the number two  3 refiner of gasoline in the period 1985  4 to 2000 in California?  5 A. I couldn't say. I couldn't  6 say. I have not looked at that. Yeah,  7 on a supply basis, it would be difficult  8 to estimate what that was.  9 Q. Can you tell the jury how  10 many refineries Shell operates in  11 California?  12 MS. AMRON: Objection,  13 relevance.  14 A. I believe two at this  15 point.  16 Q. Two at this point. They  17 previously operated three; am I correct?  18 A. That's correct.  19 Q. So they had a refinery  20 known as Shell Martinez in northern  21 California; am I correct?  22 A. That's correct.  23 Q. They have one in southern  24 California at what location?</p>	<p style="text-align: right;">Page 132</p> <p>1 A. I do not.  2 Q. With regard to BP Amoco, do  3 you know how many refineries BP Amoco  4 has operated in California in the period  5 1985 to 2003?  6 A. No. Again, there is a lot  7 of shifting ownership there with the  8 acquisition of ARCO had facilities. BP  9 at this point, I think, is down to one  10 refinery in California.  11 Q. And that location that you  12 are aware of is located where?  13 A. It is in the LA basin area.  14 Q. With regard to Exxon's  15 Benicia refinery based on your  16 experience, is there any evidence that  17 you can point us to that indicates that  18 Exxon refined gasoline in the period  19 1985 to 2000 was distributed to markets  20 in southern California?  21 A. Just my general  22 knowledge that -- I'm sorry. This was  23 Benicia?  24 Q. Correct.</p>
<p style="text-align: right;">Page 131</p> <p>1 A. It's in the LA area.  2 Q. And they also had one  3 historically in Bakersfield; am I  4 correct?  5 A. That's correct.  6 Q. Conoco Phillips, they have  7 how many refineries operating in  8 California?  9 MS. AMRON: Objection,  10 relevance.  11 A. Two. One in the San  12 Francisco area and one in the LA area.  13 Q. And historically do you  14 know how many refineries Conoco Phillips  15 and the companies which it purchased has  16 operated in California in the period  17 1985 to 2000?  18 A. No. Again, ownership has  19 changed. I think I would have to go  20 back and compile that data.  21 Q. With regard to Conoco  22 Phillips, do you know if it's the number  23 two refiner of products during the  24 period 1985 to 2003 in California?</p>	<p style="text-align: right;">Page 133</p> <p>1 A. General knowledge that the  2 Benicia refinery was connected into the  3 Kinder Morgan common carrier pipeline  4 system or its predecessors and that, you  5 know, I would expect that they would  6 have been distributing gasoline along  7 those systems.  8 Q. And is it fair to say that  9 the northern California Kinder Morgan  10 system does not connect to any terminals  11 in the Los Angeles, Orange County, San  12 Diego area?  13 A. That's correct. The  14 northern and the southern systems are  15 not connected.  16 Q. Have you seen, in the  17 course of your work as a consultant in  18 this industry, any evidence to indicate  19 that there were shipments by barge or  20 tanker out of the Benicia refinery into  21 the Los Angeles basin?  22 A. I know that there have been  23 limited shipments between San Francisco  24 and LA. I'm not sure that it's always</p>

<p style="text-align: right;">Page 134</p> <p>1 been in one direction. But to be  2 specific, I don't know specifically if  3 Benicia has shipped to LA.  4 Q. With respect to your  5 knowledge of the industry, do you know  6 in what year Exxon announced a market  7 withdrawal under the Petroleum Marketing  8 Practices Act for marketing of gasoline  9 in southern California?  10 A. I do not.  11 Q. With regard to your  12 knowledge in the industry, do you know  13 if Exxon marketed gasoline in southern  14 California after 1993?  15 A. I'm sorry. If Exxon --  16 Q. Yes. Or to rephrase it, do  17 you know if in 1993 Exxon terminated  18 operations in southern California under  19 the Petroleum Marketing Practices Act  20 and formally withdrew from distributing  21 Exxon product as Exxon?  22 A. No, I can't say that --  23 Q. Do you know in what year  24 Mobil terminated its relationships with</p>	<p style="text-align: right;">Page 136</p> <p>1 A. No. I mean, historically  2 the general objective of refiners in the  3 States has been to maximize gasoline  4 production, but I cannot say  5 specifically what Mobil's objective was.  6 Q. With respect to Mobil, do  7 you know if they had any unbranded sales  8 of gasoline at racks at any of their  9 proprietary terminals in the period 1985  10 to 2000?  11 MS. AMRON: Objection,  12 beyond the scope of direct.  13 A. I do not.  14 Q. With regard to Mobil, do  15 you know whether or not their philosophy  16 and approach to producing gasoline was  17 to refine as much gasoline as was  18 necessary to meet demands of its branded  19 outlets?  20 A. I do not.  21 Q. With regard to the work  22 that you did to appear here today, did  23 you look at any materials other than the  24 Oil and Gas Journal annual surveys?</p>
<p style="text-align: right;">Page 135</p> <p>1 distributors and marketers in central  2 and northern California and withdrew  3 from the market under the Petroleum  4 Marketing Practices Act?  5 A. No.  6 Q. With respect to the  7 operations at the Mobil Torrance  8 refinery, in your experience did you  9 ever learn anything about Mobil's  10 natural business unit management  11 philosophy as it related to refining  12 product at Torrance and distributing  13 product from Torrance?  14 A. No, I'm not familiar with  15 that system. That's an internal Mobil  16 program?  17 Q. With respect to Mobil, do  18 you know what the Mobil refining  19 operations' objectives were in terms of  20 how much gasoline they would produce for  21 distribution from a refinery like the  22 Torrance refinery in California?  23 MS. AMRON: Objection,  24 vague.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Yes. The National  2 Petroleum News annual volumes for retail  3 sales.  4 Q. And what years did you look  5 at from the National Petroleum News for  6 annual volumes of retail sales?  7 A. Well, '85 to 2003.  8 Q. And did you keep copies of  9 the annual survey information you looked  10 at from the National Petroleum News for  11 the years 1985 to 2003?  12 A. We had actually -- we have  13 quite a number in our library which we  14 maintain. I believe for the older data,  15 and I can't tell you exactly which of  16 the oldest years, but back in the '80s I  17 ended up using an API, it is called a  18 basic data book, which references the  19 NP, National Petroleum News annual  20 reports. So, sorry, I misspoke. It was  21 not every year the annuals because  22 unfortunately we're not keeping all the  23 paper copies anymore.  24 Q. And with regard to the</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 basic book maintained by API, do you 2 know what method was used to transfer 3 information from NP, National Petroleum 4 News, to the form you looked at? 5 A. All I know is that they 6 reference the National Petroleum News as 7 the source. And there was some overlap 8 with the National Petroleum News volumes 9 that we do have and it checked out, so 10 it seemed like they were accurately 11 transferring the data. 12 MR. STACK: Counsel, we 13 would request copies of whatever 14 National Petroleum News volumes the 15 witness may have reviewed for purposes 16 of giving testimony here today and 17 whatever volumes of the API basic 18 information that were referred to and 19 reviewed by the witness and testify -- 20 in preparing to testify here today. And 21 we request that those be provided to us 22 before any of the videotape be shown at 23 trial, if indeed the Court permits it. 24 BY MR. STACK:</p>	<p style="text-align: right;">Page 140</p> <p>1 and, you know, I'm comfortable relying 2 on my general knowledge over the years 3 of the high position of Exxon Mobil in 4 terms of both capacity share and retail 5 share. 6 MR. STACK: Move to strike 7 as nonresponsive. 8 BY MR. STACK: 9 Q. Specifically, Mr. Burke, 10 what years of the Oil and Gas Journal 11 did you look at in preparing to give 12 testimony here today, notwithstanding 13 the fact that you may have been told 14 that you shouldn't rely on that? 15 A. Okay. 16 MS. AMRON: I object to that 17 as asked and answered and as 18 mischaracterizing the witness' 19 testimony. He said he didn't rely on 20 that in testifying here today. 21 BY MR. STACK: 22 Q. Can you tell us which 23 years, Mr. Burke, you looked at? 24 A. Yeah.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Turning now to the Oil and 2 Gas Journal, what volumes of the Oil and 3 Gas Journal did you review to appear -- 4 prior to appearing here today? 5 MS. AMRON: I'm sorry. 6 Vague and ambiguous. Are you asking 7 about what he reviewed to prepare for 8 today or just prior to showing up today? 9 BY MR. STACK: 10 Q. In preparing to give 11 testimony here today, sir, what Oil and 12 Gas Journals did you look at to assist 13 you in giving testimony? 14 A. Well, I mean, it is kind of 15 a tricky question because I was told 16 fairly recently that I could not depend 17 on any analysis I have done to testify 18 today. So, you know, the tables which I 19 put together which are in Exhibit 8 20 confirmed my understanding of ranking 21 for Exxon Mobil and capacity and 22 retail. Now, I have tried, as I said, 23 since I was instructed not to use that 24 analysis, basically not to rely on that,</p>	<p style="text-align: right;">Page 141</p> <p>1 MS. AMRON: Object. Wait. 2 I'm going object to that as vague. 3 THE WITNESS: Sorry. 4 I cannot tell you 5 specifically which years. I used every 6 year that we have, either physical or 7 electronic copies, of the annual Oil and 8 Gas Journal issue, which generally comes 9 out in December of each year as the 10 basis for the table. 11 For the older data where we 12 did not have the detailed information, 13 again, that source was out of the API 14 Basic Data Book, I believe is the name 15 of it. 16 MR. STACK: With regard to 17 the Oil and Gas Journals that may have 18 been reviewed by the witness or the API 19 basic information book that was referred 20 to, we would request copies of those and 21 request that they be produced prior to 22 the Court permitting the plaintiff to 23 show any of the videotape we've prepared 24 today.</p>

<p style="text-align: right;">Page 142</p> <p>1 BY MR. STACK:  2 Q. Other than the National  3 Petroleum News and the API basic book  4 and the Oil and Gas Journal, were there  5 any other materials that you reviewed to  6 prepare to give testimony here today?  7 MS. AMRON: I'm going to  8 object to that as mischaracterizing the  9 witness' testimony about what he  10 reviewed in preparing for giving  11 testimony today.  12 A. Based on the fact that I'm  13 relying on my industry knowledge to  14 respond to the various questions, those  15 two are the sources that I had used to  16 prepare these tables in Exhibit 8. I'm  17 not sure if that exactly answers your  18 question.  19 Q. Well, in preparing  20 Exhibit No. 8, other than the National  21 Petroleum News database and/or the Oil  22 and Gas Journal or the API basic  23 database, were there any other materials  24 that you relied upon to prepare any of</p>	<p style="text-align: right;">Page 144</p> <p>1 dispute between the parties.  2 A. Yeah. I did not prepare  3 this document, first off.  4 But those three sources are  5 the sources used to prepare the tables.  6 Q. If I can direct your  7 attention to Exhibit No. 1, the graphic  8 that says "ExxonMobil Refineries - 1985-  9 2003" --  10 MS. AMRON: That's actually  11 Exhibit No. 2, Bill.  12 MR. STACK: Pardon me,  13 Exhibit No. 2, correct. It is the  14 notice.  15 BY MR. STACK:  16 Q. Exhibit No. 2, did you  17 prepare Exhibit No. 2, Mr. Burke?  18 A. No.  19 Q. With respect to  20 Exhibit No. 3, the "Kinder Morgan  21 Pipeline System, Northern California,"  22 did you prepare that exhibit?  23 A. No.  24 Q. With respect to the</p>
<p style="text-align: right;">Page 143</p> <p>1 the tables or other information --  2 (Interruption by  3 teleconference operator.)  4 MR. STACK: I think we're  5 there. Pardon the interruption.  6 BY MR. STACK:  7 Q. The question that I was  8 getting ready to pose to you was, in  9 preparing the tables and other  10 information you conveyed to counsel for  11 preparation of Exhibit No. 8, the  12 proposed stipulations, apart from the  13 National Petroleum News and the Oil and  14 Gas Journal and the API basic  15 information source book, what other data  16 did you look at or review to assist in  17 preparing Exhibit No. 8?  18 MS. AMRON: I'm going to  19 object to that, excuse me, on the  20 grounds of relevance and on the grounds  21 that it is inappropriate to use  22 Exhibit No. 8 in this deposition as it  23 was a document prepared by counsel for  24 counsel in an effort to resolve a</p>	<p style="text-align: right;">Page 145</p> <p>1 Exhibit No. 4, "Kinder Morgan Pipeline  2 System, Southern California," did you  3 prepare that exhibit?  4 A. I did not.  5 Q. Did you download  6 Exhibit No. 3 from the Kinder Morgan  7 pipeline system Web site?  8 A. I have downloaded it. You  9 are talking about specific for this  10 exhibit?  11 Q. Yes.  12 A. No, I did not.  13 Q. And so the question is  14 clear, with respect to the preparation  15 of Exhibit No. 3, did you specifically  16 undertake to prepare it by downloading a  17 map from the Kinder Morgan pipeline  18 system Web site?  19 A. I did not.  20 Q. With regard to  21 Exhibit No. 4 and its preparation, did  22 you download a map from the Kinder  23 Morgan pipeline system to prepare that  24 exhibit?</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 146</p> <p>1 A. I did not.</p> <p>2 MR. STACK: I have no</p> <p>3 further questions at this time.</p> <p>4 MR. CAMPINS: This is</p> <p>5 Mr. Campins. I just want to make sure</p> <p>6 the record is clear here, Bill. If you</p> <p>7 have any questions that you asked that</p> <p>8 we directed the witness not to answer</p> <p>9 and you would like to reask those now,</p> <p>10 reask them and we'll make our</p> <p>11 objections. But because the witness is</p> <p>12 going to be out of the United States, we</p> <p>13 want to make sure you have a full</p> <p>14 opportunity to ask those questions. So</p> <p>15 go ahead, go forward.</p> <p>16 MR. STACK: Under the</p> <p>17 circumstances I think I made my record.</p> <p>18 I cannot at this point in time recall</p> <p>19 those questions which may have been</p> <p>20 asked and to which counsel posed an</p> <p>21 objection and directed the witness not</p> <p>22 to answer.</p> <p>23 I would prefer to conclude</p> <p>24 now and take up those issues later with</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. STACK: Fine. If you</p> <p>2 put it that way, then I will ask the</p> <p>3 court reporter to find the instances</p> <p>4 where you have directed the witness not</p> <p>5 to answer and we will revisit every one</p> <p>6 of those. Take a moment to go off the</p> <p>7 record.</p> <p>8 Ann, if you would be so kind</p> <p>9 and accommodate us. Let's identify</p> <p>10 them, read them off the record and then</p> <p>11 read them on the record.</p> <p>12 THE VIDEOGRAPHER: We're</p> <p>13 going off the record. The time is</p> <p>14 4:58 p.m.</p> <p>15 (Recess.)</p> <p>16 THE VIDEOGRAPHER: We're</p> <p>17 back on the record. The time is</p> <p>18 5:02 p.m.</p> <p>19 BY MR. STACK:</p> <p>20 Q. Mr. Burke, in an attempt to</p> <p>21 try to do this as succinctly as</p> <p>22 possible, I'm going to ask you a series</p> <p>23 of questions relative to the work that</p> <p>24 you performed in advance of this</p>
<p style="text-align: right;">Page 147</p> <p>1 the Court.</p> <p>2 MR. CAMPINS: Well, Bill,</p> <p>3 this is Nick again. Why don't we ask</p> <p>4 the court reporter to find those places</p> <p>5 and have her reread each question then</p> <p>6 if you're going to make an issue of this</p> <p>7 with the Court.</p> <p>8 MR. STACK: I may make an</p> <p>9 issue of it with the Court; I may not.</p> <p>10 I don't know that it would be</p> <p>11 particularly profitable to have each of</p> <p>12 those questions reread. It appears to</p> <p>13 be rather laborious and time-consuming.</p> <p>14 You've made your record. I've made</p> <p>15 mine. And I think we can conclude</p> <p>16 and/or you can go forward and ask the</p> <p>17 witness questions yourself.</p> <p>18 MS. AMRON: I think there</p> <p>19 were only two or three questions. It is</p> <p>20 not a lot of questions. If you don't</p> <p>21 want to ask the court reporter to do</p> <p>22 that, then -- you know, you have the</p> <p>23 opportunity to do it and if you don't</p> <p>24 want to take it, that's okay.</p>	<p style="text-align: right;">Page 149</p> <p>1 deposition and also the sessions that</p> <p>2 you may have spent with counsel.</p> <p>3 Counsel may have to, in</p> <p>4 order to preserve the record, object.</p> <p>5 We will try to do it as quickly as</p> <p>6 possible.</p> <p>7 In advance of appearing</p> <p>8 here to testify, did you meet with</p> <p>9 counsel to discuss the nature of your</p> <p>10 testimony in these proceedings?</p> <p>11 A. I did.</p> <p>12 Q. And when did you meet with</p> <p>13 counsel?</p> <p>14 A. Immediately before coming</p> <p>15 over to the deposition.</p> <p>16 Q. And that would be sometime</p> <p>17 this morning, the morning of Saturday,</p> <p>18 October 10?</p> <p>19 A. That's correct.</p> <p>20 Q. And how long did that</p> <p>21 meeting take place with counsel?</p> <p>22 A. Probably started 10:30 --</p> <p>23 I'm looking for a little guidance here.</p> <p>24 10:30.</p>

<p style="text-align: right;">Page 150</p> <p>1 THE WITNESS: I'm not sure  2 when you left, Susan.  3 10:30 to probably 12:30.  4 BY MR. STACK:  5 Q. And in the course of that  6 meeting, you were in the company of  7 Ms. Amron and Mr. Campins; am I correct?  8 A. That's correct.  9 Q. And where did the meeting  10 take place this morning?  11 THE WITNESS: You guys know  12 the address. It's --  13 A few blocks from here. I  14 will need some help on the address, to  15 tell you the truth.  16 MS. AMRON: 15 Park Row.  17 THE WITNESS: There you go.  18 BY MR. STACK:  19 Q. Prior to meeting this morning, had  20 you had conversations with counsel  21 relative to providing them with  22 information for the proposed  23 stipulation, Exhibit No. 8?  24 MS. AMRON: I'm going to</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. How many times did you  2 speak to counsel relative to information  3 to be provided to them for inclusion in  4 Exhibit No. 8?  5 MS. AMRON: Objection to  6 relevance and standing objection to the  7 document.  8 A. Probably two or three  9 times.  10 Q. When were you first  11 contacted to provide information to  12 counsel for inclusion in Exhibit No. 8?  13 MS. AMRON: Objection as to  14 relevance. Same objection as to the  15 questions about that document. I  16 believe it mischaracterizes the witness'  17 testimony.  18 A. Probably three weeks ago,  19 something like that.  20 Q. And in the three-week  21 period, did you work with your  22 colleagues to develop a list profiling  23 Exxon Mobil's refining capacity 1985 to  24 2003?</p>
<p style="text-align: right;">Page 151</p> <p>1 object to that question on the grounds  2 that the stipulation is an inappropriate  3 topic for this deposition for all the  4 reasons I stated already.  5 You may answer.  6 MR. STACK: Are you  7 permitting the witness to answer, Susan.  8 MS. AMRON: Yes. In fact I  9 just very quietly told him he may  10 answer.  11 MR. STACK: Okay.  12 THE WITNESS: Yes, I had  13 phone conversations.  14 BY MR. STACK:  15 Q. And apart from phone  16 conversations, did you have any face-to-  17 face meetings with counsel relative to  18 information that was requested of you  19 for inclusion in Exhibit No. 8?  20 MS. AMRON: Again, object on  21 the grounds of relevance and also to  22 the -- standing objection to the  23 questioning about that document.  24 A. No, I did not.</p>	<p style="text-align: right;">Page 153</p> <p>1 MS. AMRON: Objection as to  2 relevance and to the use of Exhibit 8 or  3 questions about Exhibit 8.  4 A. Yes, I did.  5 Q. Who else did you work with?  6 MS. AMRON: Same objection.  7 A. I had an analyst, Michelle  8 Guterrez, work on it.  9 Q. And with regard to the  10 information pertaining to Exxon Mobil  11 market share and ranking for market  12 share and sales of gasoline, did you  13 have anyone assist you in pulling that  14 information today?  15 MS. AMRON: Objection as to  16 relevance and to the use of the  17 questions about Exhibit 8.  18 A. The answer is yes, and it  19 was, again, Michelle Guterrez.  20 Q. Approximately how much time  21 did you spend in assembling information  22 relative to profiling Exxon Mobil's rank  23 and refining capacity and Exxon Mobil's  24 rank and market share in the United</p>